IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	**23.02.2024**
PRONOUNCED ON :	**07.03.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.3907 of 2024
and W.M.P.Nos.4230 & 4231 of 2024

Overseas Infrastructure Alliance (India)
Private Limited
Rep. By its Authorized Representative,
Vinod Chaturvedi,
501, OIA House,
470, Cardinal Gracious Road,
Andheri East, Mumbai 400 099 ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Energy Department,
Fort St.George, Chennai 600 009

2. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144 Anna Salai,
Chennai 600 002

3. O/o the Chief Engineer/IT & RAPDRP/
TANGEDCO,
6th Floor, Western Wing,
NPKRR Maaligai,

Anna Salai, Chennai 600 002

4. Director / Distribution,
TANGEDCO,
144, Anna Salai,
Chennai 600 002 ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records of the impugned order dated 13.02.2024 passed by the 1st respondent vide G.O.(D) No.3, rejecting the appeal filed by the petitioner under Section 11 of the Tamil Nadu Transparency in Tender Act, challenging rejection of the technical bid submitted by the petitioner in the Tender Ref. No.CE/IT and RAPDRP No.06 to 11/2023-24 as arbitrary, malafide and perverse and to consequently direct the 3rd respondent to declare the petitioner as technically qualified bidder allowing the evaluation of its financial bid for further evaluation in the tender.

For Petitioner : Mr.Srinath Sridevan,
Senior Counsel
For Mr.R.Anbukarasu

For Respondents : Mr.P.S.Raman,
Additional Advocate General
Assisted by Mr.Arunkumar
Standing Counsel for TANGEDCO

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O R D E R

This Writ Petition is filed by M/s.Overseas Infrastructure Alliance

(India) Private Limited against the impugned order in appeal dated 13.02.2024 passed by the first respondent Government of Tamil Nadu vide G.O(D) No 3. The impugned order rejected the appeal of the petitioner preferred under Section 11 of The Tamil Nadu Transparency in Tenders Act, 1998. Earlier, the above appeal came to be filed against the rejection of the technical bid submitted by the petitioner in Tender Ref No CE/IT and RAPDRP Nos.06 to 11/2023-24 before the 3rd respondent Chief Engineer, TANGEDCO.

2. The impugned order dated 13.02.2024, after observing that the petitioner herein failed to submit the Electrical Contractor License issued by anyone State of India or abroad as required under the tender specifications, upheld the order of the 3rd respondent rejecting the bid of the petitioner and dismissed the appeal of the petitioner.

3. It is the grievance of the petitioner that, according to them the impugned order dated 13.02.2024 of the first respondent is arbitrary, malafide and perverse and accordingly, prayed for setting aside the impugned order dated 13.02.2024 and consequently declare the petitioner as technically qualified bidder and allow the evaluation of the financial bid of the petitioner for the further evaluation of the tender.

4. Background: The petitioner is an infrastructure company, incorporated in India with the Registrar of Companies, Mumbai and hold over 20 years of experience in power sector. Before participating in the tender, they had executed 11 power projects with an aggregate value of 253 million US dollars (Rs. 2104 Crores approx) across 6 countries in the Africa continent with most of the projects sponsored by the Government of India.

5. The Ministry of Power, Government of India launched Revamped Distribution Sector Scheme (RDSS) with the objectives to improve the quality, reliability and affordability of power supply to consumers through a financially sustainable and operationally efficient Distribution Sector and to reduce the line losses by enhancing the Distribution Infrastructure. Works include the strengthening and modernising the system as well as measures for Loss reduction of the system.

6. Upon approval of the Scheme by the Ministry of Power, Government of India and the Government of Tamil Nadu and in furtherance of the Resolution passed by the Board of TANGEDCO, the 2nd respondent floated tenders for work across various districts of Tamil Nadu in the form of many packages. The tender follows a single stage tender consisting of Two-envelope bidding process. The first envelope is Technical Part and the second envelope is Financial Part.

7. The tender was first floated during January, 2023. In the original tender, the experience clause excluded the experiences accumulated by the participants outside India. Aggrieved by the clause, the petitioner who had not done any project in India but had a wealth of experience outside India had filed a Writ Petition in WP No 13806 of 2023 in the nature of Public Interest Litigation before this court. The first bench of this Court was pleased to allow the petition vide Order dated 27.04.2023 and directed the 3rd respondent to allow the petitioner to submit the bid by taking note of its experience outside India. The SLP (Civil) No 10869 of 2023 preferred by the respondents against the order of this Court was dismissed by the Hon'ble Supreme Court vide its Order dated 18.05.2023.

8. In pursuance of the above orders of the Courts, the petitioner participated in the tender. After technical evaluation, the 3rd respondent cancelled the tender process as all the bids were rejected. Thereafter, the 3rd respondent floated the present tender on 25.06.2023. As the EMD paid by the petitioner remained unpaid by the 3rd respondent even after the cancellation of the tender, another Writ Petition in WP No 22890 & batch of 2023 were filed by the petitioner. This Court vide a common order dated 03.08.2023 directed the 3rd respondent to refund the EMD money deposited in the cancelled tender. Upon refund of the EMD money in the cancelled tender to the petitioner, the said WP got closed by this Court.

9. To ensure that the BQR of the present tenders is fulfilled beyond doubt, the petitioner had entered into Joint Venture Agreement with M/s Associated Power Structures Private Limited and M/s Skipper Limited. The petitioner had submitted the requisite documents and participated in the tender on 14.08.2023. The tender bid got rejected. The decision of rejection was communicated to the petitioner by the 3rd respondent through a simple Email dated 24.11.2023. As the reason for rejection was very vague in the Email communication, the petitioner vide Email dated 26.11.2023 sought to know which part of the BQR is not satisfied.

10. No reply was received for the said mail and the petitioner feared prejudice on the part of the TANGEDCO authorities owing to the many writ petitions filed by the petitioner with regard to the tender bid from time to time. So, the petitioner filed Writ Petition No 33809 and batch of 2023 that was allowed vide a common order dated 07.12.2023. This Court directed the 3rd respondent to furnish reason for rejections within 6 days of the order. This court granted an opportunity to the petitioner to file an appeal under Section 11 of The Tamil Nadu Transparency in Tenders Act, 1998, after supply of the reason of rejection. The court further directed that the appeal shall be disposed off within a period of 2 weeks after giving an opportunity of personal hearing to the petitioner.

11. In compliance of the above order of this Court, the 3rd respondent through letter dated 08.12.2023 communicated the reasons for rejection as below:-.

1. "the completion certificates furnished by the lead bidder M/s OIA India Private Limited are contradictory and the authenticity of the same could not be relied upon"

2. "has not submitted necessary Electrical Contractor Licence neither from any of the states in India nor from Abroad and furnished an undertaking to acquire Class I Licence from Tamil Nadu state within two months from the date of the award of the contract."

12. Not satisfied with the reason for rejection given by the 3rd respondent, and in pursuance of the order dated 07.12.2023 of this Court in Writ Petition No 33809 and batch of 2023, the petitioner had preferred an appeal before the Appellate Authority viz. Principal Secretary to Government, Energy Department under Section 11 of The Tamil Nadu Transparency in Tenders Act, 1998. The petitioners attended the Personal Hearing on 31.01.2024. In the Personal hearing, the petitioner had filed written submissions and presented completion certificates of projects executed by all 3 individual companies forming part of the Joint Venture. They had also submitted the Electrical Contractor Licence issued to them by the State of Tamil Nadu on 18.10.2023. Subsequently, the Appellate Authority passed the impugned order dated 13.02.2024, the relevant portion of which is reproduced below:-

"the Appellate Authority has observed that the

appellant company Tvr Overseas Infrastructure Alliance (India) Private Limited (the petitioner herein) has failed to produce the valid electrical contractor license from any state of India or abroad. In view of the above, the appellate authority has decided to uphold the rejection of the bids submitted by Tvr Overseas Infrastructure Alliance (India) Private Limited by Bid Evaluating Committee holding that the said company has not satisfied the Bid Qualification Requirement (BQR) as specified in clauses 2.1.1 to 2.1.4 and 3.8.6. Further, no fresh evidence to the contrary has been produced by the appellant company. For the foregoing reasons, the Government after careful consideration has decided to dismiss the appeal"

13. Heard the counsels for both sides. Learned Advocate General appeared for the respondents and Mr.Srinath Sridevan, learned Senior Counsel appeared on behalf of the petitioners.

14. Learned counsel for the petitioner contended that the impugned order dated 13.02.2024 of the Appellate Authority is passed without application of mind and suffers from perversity. He pointed out that as per Para 4 of the impugned Order dated 13.02.2024, the Appellate Authority has recorded a finding that the Electrical contractor License was submitted by the petitioner. In Para 5 of the same order the Appellate Authority has observed that the petitioner failed to produce the Electrical Contractor License from any state of India or abroad. He asserted that the impugned order is so perverse that it breaches even the high threshold of Wednesbury Unreasonableness and therefore, it ought to be set aside. He pointed out that the two completion certificates issued by M/s Ethiopian Electric Power –EEP, Republic of Ethiopia alluding to the execution of power project named Hageremariam-Mega-Bokulubuma submitted by the petitioner would satisfy the experience requirement under clause 2.1.1 to 2.1.4 of the Bidder Qualification Requirement in the tender document. It was pointed out that the certificates are genuine and were duly authenticated by the Indian Embassy at Addis Ababa, Republic of Ethiopia as required under Note 2 of Clause 3.8.5 of the tender document. It was further pointed out that the completion certificate dated 29.07.2015 was issued on completion of the construction of the project during July, 2015 and the second certificate dated 26.07.2023 was issued for commissioning of the project on 28.03.2019 and therefore there is no problem with the certificates. It was argued that both the certificates jointly and severally fulfill the experience requirement within the 7 year period going by the interpretation of clause 2.1.1 to 2.1.4 of the Bidder Qualification Requirement in the tender document. He argued that the 7 year period in the tender condition starts from 01.04.2015. He took support from the specific date of 31.03.2022 mentioned in form No 9 appended to the tender document to drive home his point. He also reminded the court of the back ground of the case and the many writ petitions filed during the course of the tender process to demonstrate bias. In result, he asserted that the rejection of the bid of the petitioner is illegal.

15. The respondents, on the other hand would contend that the first completion certificate dated 29.07.2015 do not fulfill the experience criteria requirement in BQR as it represents work executed before the 7-year period as per the tender conditions. It was asserted that the threshold period starts from 01.04.2016 in terms of clause 2.1.1 to 2.1.4 of the Bidder Qualification Requirement in the tender document and the cut-off date mentioned in Form No 9 is a carried forward error from past tender documents and the petitioner cannot be allowed to take advantage of the same. In support of the assertion, they pointed out to the “up to the last completed financial year” mentioned within brackets in the above said clause. They relied on the decision of the

Hon'ble Supreme Court in the case of ***Master Marine Services Private Limited vs Metcafe & Hodgkinson Private Limied & Anr*** **(2005) 6 SCC 138.** Regarding the second completion certificate dated 26.07.2023, it was assailed that the petitioner got the same issued against the same project with minor additions and commissioning, only for the sole purpose of meeting the BQR of the tender. Therefore, admitting the certificate for the purpose of eligibility would set a wrong precedent. It was stated that neither of the completion certificate was suspected but only that the same could not be considered to fulfill the requirement of bid in terms of the tender specifications. The respondents would argue that the failure to produce Electrical Contractor Licence at the time of submitting tender is fatal as it is a vital and statutory requirement to hold a license. It was argued that in its absence, it would be difficult for the tendering authority to predict whether the bidder will be in a position to secure a license after the contract is awarded. It was pressed that no leniency can be allowed on the condition as it involves the safety, life and liberty of the persons involved. It was advanced that the terms completion and commissioning had different perspectives and that the tender specification stipulates completion only. It was asserted that the impugned order was passed by the 1st respondent after careful consideration and after hearing the petitioner and as there is no element of arbitrariness or malice, the petition needs no interference.

16. The learned Advocate General stressed the point that writ interference is not warranted in the instant case. He relied on a large array of judgments mentioned below that enshrined the principles to be followed by constitutional courts while dealing with government contracts and tenders, to assert his points.

1. ***Agmatel India Private Limited vs Resoursys Telecom & Ors*** **(2022) 5 SCC 362**
2. ***Municipal Corporation, Ujjain & Anr vs BVG India Private Limited*** **(2018) 5 SCC 462**
3. ***Master Marine Services Pvt Ltd vs Metcalfe & Hodgkinson P Ltd & Anr*** **(2005) 6 SCC 138**
4. ***Silppi Constructions Contractors vs Union of India*** **(2020) 16 SCC 489**
5. ***Jagdish Mandal vs State of Orissa & Ors*** **(2007) 14 SCC 517**
6. ***Tata Motors Ltd vs Brihan Mumbai Electric Supply & Transport Undertaking (BEST) & Ors*** **(2023) SCC online SC 671**
7. ***Brandmidas Hospitality and Aviation Services PVt Ltd vs AAI &***

Anr in Writ Petition No 35845 of 2019, Madras High Court

8. ***National High Speed Rail Corpn. Ltd vs Monte Carlo Limited & Anr*** **(2022) 6 SCC 401**

9. ***Tata Cellular vs Union of India*** **(1994) 6 SCC 651**

17. He reiterated the principles of judicial restraint postulated by the Hon'ble Supreme Court on administrative actions, particularly in matters of tenders in the judgments above relied by him. That the court shall not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the necessary expertise to correct the administrative decision and therefore such corrections could be fallible. The terms of the invitation of tender cannot be open to judicial scrutiny because the same is in the realm of contract. He pointed out that Fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative or quasi judicial sphere. He cautioned that mindless quashing of administrative decisions may impose administrative burden besides incurring unbudgeted expenditure. After walking the court through these principles he asserted that this Writ petition is a fit case to be dismissed on threshold.

18. After hearing the learned counsels of both sides and perusal of the documents and written arguments gracefully filed by the parties in quick time at the request of this court, it could be seen that the bone of contention regarding the tender proceedings and the legality of the impugned order of the Appellate Authority boiled down to four questions.

> ***1.****Whether the petitioner satisfied clause 2.1.1 to 2.1.4 of the Bidder Qualification Requirement in the tender document?*
>
> ***2.*** *Whether the petitioner satisfied clause 3.8.6 of the Request for Bids in the tender document?*
>
> ***3.****Whether the manner of passing of the impugned order dated 13.02.2024 of the Appellate Authority suffered from perversity and unreasonableness?*
>
> ***4.*** *Whether the interference of this Court is warranted in the light of the many pronouncements of the Hon'ble Supreme Court in matters of Public Tenders?*

19. For the purpose of convenience of passing this order, the above queries are taken up and discussed in the following order of preference:

1) <u>Whether the manner of passing of the impugned order of the Appellate Authority suffered from perversity and unreasonableness?</u>

On a reading of the impugned order dated 13.02.2024, it is observed that the order has upheld the rejection order of the 3rd respondent without any discussions or any cogent reasoning. In other words, the order is blunt and not speaking. It's a casually passed order, vaguely written without considering any of the contested issues the Appellate Authority was expected to adjudicate. There is no discussion as to how the rejection order of the 3rd respondent is in order. The Appellate Authority has simply observed that the petitioner has not filed the Electrical Contractor Certificate issued by any other state of India or abroad as required under clause 3.8.6 of the Request for Bids in the tender document and went on to uphold the decision of the 3rd respondent. As such there is no nexus between the lone observation and the conclusion arrived at by the Appellate Authority. There is no appreciation of the decisions or the many orders passed by this court on the matter in the last one year. It is further observed that the order has recorded the submission of additional documents at the time of the personal hearing but no discussion as to the admissibility or otherwise of the said documents or their effect on the rejection order of the 3rd respondent is brought out in the order. Even in the sole observation of the Appellate Authority regarding the Electrical Contractor License of any state of India or abroad, she failed to consider as to why the failure was fatal for the petitioner's case. The order is unreasoned, vague and therefore perverse. This court agrees with the petitioner counsel that this is a copy book case of wednesbury unreasonableness. A mere recital of the respondents that the order is just and reasonable is of no help to cause of the respondents. Therefore, on this count alone, the impugned order that is incoherent and vague is liable to be set aside as illegal.

2)Whether the interference of this Court is warranted in the light of the many pronouncements of the Hon'ble Supreme Court in matters of Public Tenders.?

The learned Advocate General had guided this court through the many judgments of the Hon'ble Supreme Court that time and again stressed the need for judicial restraint in the matters of administrative actions, particularly in matters of public tenders. The many perils of judicial interference on tenders were lucidly explained by him. The many reasons given by the hon'ble Supreme Court from time to time why such interference will be inimical or antithetical to justice was also elaborated by him. This court agrees that abundant caution needs to be taken by Courts before interfering in matters of administrative decisions and tenders. At the same breadth, this court is also alive to the situations postulated by the very same judgments as to when writ interference is inevitable. It is rather, the duty of this court to step in when there is overt signs of arbitrariness, unreasonableness, perversity and injury to public good while passing an administrative order. In the instant case, this court has seen the many fights by the petitioner at various stages of the very same tender. And invariably everytime, as could be seen from the discussion of the background of this case, this court has found that the petitioner was on the fair side of law and equity. The very object of The Tamil Nadu Transparency in Tenders Act, 1998 is to bring fairness in administering tenders. Transparency is the hall mark of good administration. Transparency will encourage healthy competition. Transparency brings efficiency in public spending which ultimately ease the burden of public to benefit them. Particularly in the instant case as there is only one technically qualified bidder at the end of the technical evaluation as rightly pointed out by the petitioner counsel. Therefore, and for the reasons discussed in answer to the earlier query, I have no hesitation to hold that this is the perfect case for Writ interference. Rightly, this court has interfered in the very same tender in the past, in the case of the petitioner, that was eventually affirmed as fair interference by the hon'ble supreme court.

3) Whether the petitioner satisfied the requirement under clause 2.1.1 to 2.1.4 of the Bidder Qualification Requirement in the tender document ?

Clause 2.1.1 to 2.1.4 of the Bidder Qualification Requirement in the tender document stipulates that the participants should carry the experience of executing contracts in the 7 year period preceding the financial year of issue of tender. That is 7 year period up to the last completed financial year. The original tender was issued during January, 2023. In the original tender, the condition did not recognize or take into account experiences gained abroad. The petitioner had all their experiences abroad with no local experience. However, the petitioner was allowed to participate in the original tender after the intervention by this Court that held such a condition has no rational basis and runs contrary to the mandate of Articles 14 and 19 (1) (g) of the Constitution of India. In the bid, the petitioner had filed a completion certificate dated 29.07.2015 issued by the Ethiopian Electric Utility, Republic of Ethiopia (formerly Ethiopian Electric Power Corporation) for the completion of construction of the project going by the name Hageremariam – Mega - Bolulubuma. The respondents cancelled the tender during June, 2023 stating that none of the participants succeeded in the technical bid. The tender was re-issued on 25.06.2023. In the re-issued tender, the petitioner, in addition to the completion certificate dated 29.07.2015, filed another completion certificate dated 26.07.2023 for the same project. The second completion certificate certifies the completion of left over work, some additional works and the successful commissioning of the project during 2019. The respondents' contention is that the starting date of the 7 year period contemplated under clause 2.1.1 to 2.1.4 is 01.04.2016 and therefore the experiences gained on the completion certificate dated 29.07.2015 will not be counted for the purpose of evaluation of this tender. The petitioner, on the other hand, relying on the definition of the term financial year from The General Clauses Act, propounded a stricter interpretation of the clause stating that the starting date for the purposes of determining the 7 year period stipulated in clause 2.1.1 to 2.1.4 of the Bidder Qualification Requirement in the tender document is 01.04.2015. They contended that as per The General Clauses Act, the financial year starts from first of April and ends in the 31st day of March following year and therefore, the preceding years should be counted backwards from 01.04.2022. Therefore, they argued that, the Completion certificate dated 29.07.2015 by itself will suffice to satisfy the condition in the BQR. Besides the above certificate, the petitioner had also filed the second certificate issued for the same project recording the commissioning of the project during 2019 implying that the execution of the contract continued until 2019. It was asserted that the second completion certificate dated 26.07.2023 satisfy the

BQR under clause 2.1.1 to 2.1.4 without any ambiguity. The 3rd respondent, in the rejection order, has observed that the two certificates are contradictory to each other and therefore, the authenticity of the certificates cannot be accepted to take the experiences contained therein into account. However, no basis for arriving at the conclusion was communicated to the petitioner. In fact the reason for rejection itself was furnished to the petitioner only upon the intervention of this court in yet another batch of petitions in WP Nos 33809 & Batch petitions of 2023. The impugned order of the Appellate Authority is conspicuously silent on the claims of the petitioner regarding the rejection of the bid on this ground. Surprisingly, in the written arguments of the respondents, they had chosen to take a position to state that the veracity of the certificates were not suspected but it is only that the experience cannot be taken into account. In effect, the respondents have approbated and reprobated. The petitioners had demonstrated that the completion certificates got issued and duly authenticated by the Indian Embassy at Addis Ababa, Republic of Ethiopia in accordance with the procedure laid down in Note 2 of clause 3.8.5 of the tender documents. It was argued that the clarifications if any on the admissibility or otherwise of the certificates ought to have been sought from the petitioner or through a direct enquiry in terms of clause 28 of RFB which was omitted to be done. In the circumstances, this court is of the view that once the respondents cease to have suspicion on the authenticity of the experience certificates issued by the foreign authority, they have no reason to reject the experiences contained in the second completion certificate dated 26.07.2023. Needless to say, the respondents cannot approbate and reprobate. In view of the above, the impugned order upholding the rejection of the bid of the petitioner is perverse and not tenable. The contention of the respondents that if the second completion certificate dated 26.07.2023 is permitted, it will open the flood gates of abuse by the tender participants is not tenable. So long as the commissioning date of the project covered in the completion certificate dated 26.07.2023 is not suspected or questioned, it can be safely interpreted that in an EPC contract where the construction and commissioning is executed by the same contractor, the date of commissioning will be the date of completion of the execution of the contract and the same should be counted for the purpose of Bidders Qualification Requirement under Clause 2.1.1 to 2.1.4.

Interestingly, when the tender was originally issued during the Financial Year 2022-23, the work covered under the completion certificate dated 29.07.2015 was undisputedly within the 7 year period stipulated under clause

2.1.1 to 2.1.4. However, after the reissue of the tender 6 months down the line that spilt into the subsequent financial year viz. 2023-24, the rearmost year of the 7 year period became contentious. In the peculiar circumstances of the case, a legal question arises as to whether the right/entitlement to participate in a contract that accrued out of an order res judicata can be frustrated by an administrative decision of re issue of tender? The answer is a clear no and is impermissible in the constitutional scheme of things as observed by the Hon'ble Supreme Court in the case of ***Union of India vs KM Shankarappa*** **2001 (1) SCC 582** that was very recently followed by the Hon'ble High Court of Jammu & Kashmir & Ladakh in the case of ***Rukshana Jabeen vs State of J & K***. Therefore the impugned order fails the test of legality on this count also.

4. Whether the petitioner satisfied clause 3.8.6 of the Request for Bids in the tender document?

Clause 3.8.6 of the RFP requires the participants to file a Electrical Contractor Licence issued by any one of the state in India or abroad. This requirement appears procedural of a token nature in view of a follow up condition that requires the participants to obtain Tamil Nadu Electrical Contractor Licence within a period of 2 months from the date of award of the tender. The substantial condition, therefore, is to fulfill the statutory necessity of possessing State Electrical Contractor Licence to execute work within the state of Tamil Nadu. The petitioner had obtained the Electrical Contractor Licence issued by the Electrical Licensing Board, Government of Tamil Nadu on 18.10.2023 and filed the same with the tendering authority on 30.10.2023. A copy of the same was again submitted at the time of personal hearing before the 1st respondent Appellate Authority which is recorded in the impugned order itself. The petitioner has contended that though the condition is intended and applicable only to bidders holding experiences in India, for the safer side they had got the post award requirement even before the evaluation of the tender. The impugned order is also silent on this assertion. It is recalled that the direction to include the experiences gathered abroad, specifically in the context of the petitioner's exclusive foreign experience, was taken by this court which was later affirmed by the Hon'ble Supreme Court. The procedural requirement of filing Electrical Contractor Licence of any one state in India or abroad for those who don't possess the Tamil Nadu Licence apparently was born out of the above orders. Therefore, contextually, it is fair to say that the requirement of this procedural condition is not intended for participants with exclusive foreign experience. Accordingly, it should be held that for those participants who had fulfilled the substantial condition of possessing a valid Electrical Contractor Licence issued in the state of Tamil Nadu even before the evaluation of the tender bids, the procedural requirement of filing an Electrical Contractor Licence becomes redundant rendering the said tender condition otiose for the limited purpose of evaluating the case of the petitioner and other participants with exclusive foreign experiences. Otherwise, a mere condition introduced by the executive or a convenient deferment by way of re-issue of tender can subvert the right accrued to the petitioner on account of a res-judicata order of the courts as discussed supra. The impugned order dated 13.02.2024 is silent on the issue and therefore for this reason also, the impugned order is liable to be set aside.

20. From the discussions above, it is clear that the impugned order dated 13.02.2024 suffers from legal infirmities on many counts. The impugned order is a copy book case of Wednesbury unreasonableness. Also, it was pointed out by the petitioner that if they are left out, there is only a lone bidder who is qualified for evaluation of the financial tender. That situation would fail all tenets of the Tamil Nadu Transparency of Tenders Act eventually damaging larger public good.

21. In view of the above and the many writ petitions filed by the petitioner to secure their fair participation in the tender and with a view to avoid the increase of the unbudgeted expenditure of the state on account of the delay in the execution of the contract, Writ interference become all the more necessary and accordingly the impugned order of the 1st respondent is liable to be set aside.

22. Accordingly, the writ petition is Allowed. In the result,

(i) the G.O(D)No. 3 communicating the impugned order dated 13.02.2024 is quashed as arbitrary and unreasonable;

(ii) the respondents are directed to declare the petitioner as a technically qualified bidder and include the bid of the petitioner for the next stage of financial evaluation. No costs. Consequently, connected miscellaneous petition stands closed.

7.03.2024

Note: Issue Order copy today (**07.03.2024**)

Index:Yes/No
Speaking/Non-speaking order
Internet: Yes / No

sts

To:

1.The Principal Secretary to Government,
Energy Department,
Fort St.George, Chennai 600 009

2. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144 Anna Salai,
Chennai 600 002

3. O/o the Chief Engineer/IT & RAPDRP/
TANGEDCO,
6th Floor, Western Wing,
NPKRR Maaligai,
Anna Salai, Chennai 600 002

4. Director / Distribution,
TANGEDCO,
144, Anna Salai,
Chennai 600 002

J.NISHA BANU, J.,

sts

Order made in
W.P.No.3907 of 2024

Dated:
7.03.2024